

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C8-85-161.01.3(86)(RCT)
Wells Point Commercial Section 3

P. C. DATE: 09-02-2008

AREA: 3.15 acres

APPLICANT: Michael Voticky

AGENT: Thrower Design
(Ron Thrower)

ADDRESS: 1205 West Wells Branch parkway

WATERSHED: Harris Branch

DESIRED DEVELOPMENT ZONE: Yes

ZONING: CS-CO

JURISDICTION: Full Purpose

CITY GRID: N37

SUMMARY

The applicant, owner of Lot 9, Block C, Wells Point Commercial Section 3, requests the termination of a restrictive covenant requiring joint use access with the adjoining Lot 8 to Wells Branch Parkway. This covenant was enacted in 1986 to ensure compliance with the Principle Roadways Ordinance to ensure lots with less than 200 feet of frontage at the subdivision stage utilized joint access to maintain desirable separation distance between driveways on a principle roadway.

Since 1986 the adjoining Lot 8 has been developed and the location of an existing detention and water quality facility prohibits joint access at the common property line. In addition, City transportation staff has determined that Lot 9 may be developed to meet the driveway spacing requirements and has no objection to the termination of this covenant.

STAFF RECOMMENDATION:

Staff recommends termination of the Restrictive Covenant.

PLANNING COMMISSION RECOMMENDATION:

The Zoning and Platting Commission recommended termination of the restrictive covenant on September 2, 2008. (Consent motion, 7-0-0).

CITY COUNCIL DATE: February 26, 2009

ACTION:

CASE MANAGER: Clark Patterson
clark.patterson@ci.austin.tx.us

PHONE: 974-7691



LOCATION MAP - N.T.S.

Thrower Design

4608-A South Lamar Boulevard
Austin, Texas 78745
(512) 476-4456 • Fax (512) 476-4454

July 15, 2008

Ms. Victoria Li, P.E.
Director
Watershed Protection & Development Review Department
City of Austin
P.O. Box 1088
Austin, Texas 78767

RE: Restrictive Covenant Termination

Dear Ms. Li,

Attached you will find the requisite materials to process a termination to a Restrictive Covenant.

The Restrictive Covenant styled as Joint Use Access Declaration for Wells Point Commercial, Section 3, Block c, Lots 8 & 9 found in Volume 9759, Page 611 of the Travis County Public Records and has a date of June 27, 1986. This RC was done at a time when Principal Roadways were in effect and at the time of subdivision if the lot did not have more than 200' of frontage then joint access was required with an adjoining lot. The intent was to reduce the number of driveways to parcels to maintain the 200' desirable minimum separation distance between driveways. In this case Lots 8 & 9, Block C, Wells Point Commercial Section 3 was to share a driveway to Wells Branch Parkway for access to the two sites.

My client currently owns Lot 9 which is currently undeveloped, except for a pond. A site plan application is pending under SP-2007-0688C. The abutting Lot 8 is 100% developed and access is through two driveways permitted by the City and the County to Wells Branch Parkway. Neither of these two driveways is located at or near the common property line between the two lots, which is the obvious intent of any RC specifying joint access. Additionally neither of the two driveways is contained within an easement to share a common point of vehicular access to the public street. These two permitted driveways solely serving Lot 8 are not separated with the desired minimum distance of 200'.

The site plan for Lot 8 does provide a note that Joint Access to Lot 9 will be provided through Lot 8 to Wells Branch Parkway though no easement exists or was provided at the time of site development permit approval on Lot 8. The approved and constructed development on Lot 8 prohibits the ability to have a shared joint access driveway on the common property line due to the construction of a detention and water quality facility at the common property line and abutting the right-of-way of Wells Branch.

Therefore, we respectfully request immediate termination of the Restrictive Covenant found in Volume 9759, Page 611 for the following reasons:

- 1) The abutting development on Lot 8 prohibits joint access at the common property line due to the existing detention & water quality facility.
- 2) The abutting development on Lot 8 is built with two driveways to Wells Branch Parkway and no joint access easement was required at the time of the site development permit for Lot 8 development.
- 3) The driveways to Lot 8 do not meet the 200' desired separation of driveways.
- 4) A driveway serving Lot 9 will have approximately 185' of driveway separation and would better serve the development with sole access.

Should you have any questions or need additional information, please contact me at my office.

Sincerely,

A handwritten signature in cursive script that reads "A. Ron Thrower".

A. Ron Thrower

7/00 04-08-5682

C8-85-161.01.3(85)

JOINT USE AND ACCESS DECLARATION
FOR WELLS POINT COMMERCIAL SECTION THREE, BLOCK C, LOTS 8 AND 9

THE STATE OF TEXAS

\$

COUNTY OF TRAVIS

\$

2000

248007

7.00 MISC
2 06/27/86

WHEREAS, NASH PHILLIPS/COPUS, INC., as the owner of that certain 17.141 acre tract of land in Travis County, Texas, did heretofore subdivide the same into a subdivision known as Wells Point Commercial Section Three, the plat of which is recorded in Plat Book 86, Page 160A, Plat Records of Travis County, Texas; and 160B

WHEREAS, NASH PHILLIPS/COPUS, INC. desires that common ingress, egress and access easements across and through Lots 8 and 9 of Block C;

WHEREAS, NASH PHILLIPS/COPUS, INC. intends to sell one or more of said lots to third parties and desires to provide for adequate access to and from Lots 8 and 9 of Block C, to adjacent roads and each other.

NOW, THEREFORE, for the benefit of Lots 8 and 9 of Block C and their respective owners and lienholders and their successors and assigns, NASH PHILLIPS/COPUS, INC. hereby agrees as follows:

1. NASH PHILLIPS/COPUS, INC. hereby declares that Lots 8 and 9 of Block C shall take access from Wells Branch Parkway solely by means of a joint use driveway.

2. The use of the easements herein granted shall be used and enjoyed as hereinabove provided without payment of any fee or other charge being made therefor.

3. Each respective owner of each tract shall repair and maintain the access rights and easements herein granted during the time in which this Agreement and the easements granted herein shall remain valid at the sole cost and expense of such owner. The repairs and maintenance to be undertaken and performed under this Agreement include only such maintenance and repairs necessary to the use of the access rights and easements granted herein.

4. The provisions hereof shall be a covenant which shall run with the land, insofar as they establish the existence of an

access easement of the width herein described serving the property presently owned by NASH PHILLIPS/COPUS, INC. and such provisions shall be binding upon and for the benefit of NASH PHILLIPS/COPUS, INC. as well as any future owners of the Wells Point Commercial Section Three, or any part thereof.

5. This Agreement may be modified, amended or terminated only by the action of a majority of the members of the City Council of the City of Austin and Nash Phillips/Copus, Inc. or its successors, or such other governing body as may succeed the City Council of the City of Austin.

6. Further, the precise designation of the access easement described herein shall also constitute a covenant which shall also run with the land, and shall be binding upon and for the benefit of NASH PHILLIPS/COPUS, INC. as well as any future owners of the Wells Point Commercial Section Three, or any part thereof, EXCEPT THAT such precise designation may at any future date be relocated, BUT, it shall only be relocated in accordance with the terms of this Agreement.

EXECUTED this the 9th day of April, 1986

NASH PHILLIPS/COPUS, INC.

By: Jack E. Davis
Jack E. Davis, Executive
Vice President

THE STATE OF TEXAS

§

COUNTY OF TRAVIS

§

This instrument was acknowledged before me on the 9th day of April, 1986 by Jack E. Davis, Senior Vice President of Nash Phillips/Copus, Inc., a Texas corporation, on behalf of said corporation.



Return to
LAND DEV. SERV.
CITY OF AUSTIN

Hedde

Martha N. Baze
Notary Public, State of
Texas

MARSHA N. BAZE
Printed or Stamped Name of
Notary

My Commission Expires: 11/5/89

WSD01/19/kw

09759 0612

FILED

1986 JUN 27 AM 11: 28

Luis Sepulveda
COUNTY CLERK
TRAVIS COUNTY, TEXAS

SEALER JC

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped herein by me, and
was duly RECORDED, in the Volume and Page of the
named RECORDS of Travis County, Texas on

JUN 27 1986



Luis Sepulveda
COUNTY CLERK
TRAVIS COUNTY, TEXAS

09759 0613